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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 574

PIEDMONT COTTON MILLS,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

REPLY BRIEF FOR THE PETITIONER

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Nowhere in its brief in opposition does the Government contend or even suggest that the *Virginian Hotel* decision is correct. The normal inference is that the Government concedes that the decision is wrong. Nowhere does the Government attempt to meet a single one of petitioner's arguments on the merits. The reason is that those arguments are unanswerable. Nowhere does the Government attempt to explain the incongruities resulting from the Bureau's inconsistent application of the *Virginian Hotel* doctrine, because the Government knows that those inconsistencies exist.[1]

The only argument presented by respondent for the denial of certiorari is the argument, based on *stare decisis*, that the issue has been decided and the arguments presented in previous cases. For reasons which have already

[1] The Government's unwillingness to meet the issues of this case is further illustrated by its attempt (footnote 3, Response, pp. 4-5), by way of veiled and irrelevant inference, to cast doubt upon the fact, stipulated by the parties and found by the Tax Court, that none of the excess depreciation here involved served to offset taxable income.

been pointed out in the Petition (p. 17) this is not a case in which *stare decisis* should have any real significance.

Furthermore, the Government's contention that all of the arguments here presented have been raised previously is at best a gross overstatement. For example, the Government contends (Response, p. 7) that the argument at pages 2-4 of petitioner's Supplemental Brief and at footnote 9 of the Petition (that the Commissioner lacks authority or power to "challenge" a depreciation deduction where the disallowance of the excess portion of the deduction would have no tax effect) was presented previously in the *Virginian Hotel* case Petition for Rehearing, pages 3-9 and 17-19. A brief inspection of those pages will reveal that the only arguments there presented related to the practice of the Bureau and to the fact that the Commissioner can change his mind as to the correctness of a deduction at any time prior to a final closing agreement or the expiration of the statute of limitations. Those arguments are wholly different from our present contention that the Commissioner has no authority whatsoever to "challenge" a deduction under the circumstances of this case and that consequently his failure to "challenge" is without any significance. We repeat that the latter contention has never before to our knowledge been presented to the Court.

At any rate it is clear that the Court has never, in the *Virginian Hotel* opinion or elsewhere, *met* this argument nor many of the other arguments in the petition. We submit that it should do so now in the interest of correctly and fairly settling this important problem of tax law.

Respectfully submitted,

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